

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KEYSTONE SPORTS AND
ENTERTAINMENT LLC, *et al.*

Plaintiffs,

v.

FEDERAL INSURANCE COMPANY
Defendant.

No. 2:21-cv-00609-PBT
JURY TRIAL DEMANDED

**PLAINTIFFS' FIRST NOTICE OF SUPPLEMENTAL AUTHORITY IN FURTHER
OPPOSITION TO DEFENDANT'S 12(b)(6) MOTION TO DISMISS**

Plaintiffs Keystone Sports and Entertainment LLC, et al., by and through their undersigned counsel, respectfully submit this First Notice of Supplemental Authority in Further Opposition to Defendant Federal Insurance Company's ("Federal") Motion to Dismiss (ECF No. 35).

This notice alerts the Court to *Cajun Conti, LLC et al. v. Certain Underwriters at Lloyds, London*, et al., No. 2021-CA-0343, 2022 WL 2154863 La. Ct. App., 4th Cir. June 15, 2022). This recent decision of the Court of Appeal of Louisiana, Fourth Circuit, reversed the ruling of the Civil District Court, Orleans Parish, Louisiana. The Court of Appeal held that coverage exists for loss or damage caused by "direct physical loss of or damage to" the appellant insured's premises as a result of contamination by COVID-19. *Id.* at *8. The Court of Appeal specifically concluded that "the trial court committed legal error in finding that the insurance policy was not ambiguous" and "abused its discretion in denying the declaratory judgment." *Id.*

Notably, the Court of Appeal relied upon *Port Authority of N.Y. and N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235-36 (3d Cir. 2002) for the proposition that "physical loss or damage" exists when disease-causing agents with a tangible physical form, but which are nevertheless not discernable with the naked human eye, contaminate and invade the insured property such that it is

uninhabitable or there is an immediate threat of the release of a contaminant that would cause a loss of utility. *Id.* at *5. Thus, *Port Authority* assisted the Court of Appeal in concluding that physical presence of viral particles necessitated diminished capacity, constant decontamination efforts and a slowdown of business that triggered coverage. *Id.* The Court of Appeal also found the terms “period of restoration,” “repair,” and “loss,” none of which were defined by the insurer, to be ambiguous. *Id.* at *7. These findings further led the Court of Appeal to construe the terms against the insurer and in favor of coverage. *Id.*

Dated: June 30, 2022

Respectfully Submitted,

/s/ Jeffrey P. Goodman

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*Applications for admission *pro hac vice* to be filed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that is on this 30th day of June 2022, I electronically filed the foregoing Plaintiffs' First Notice of Supplemental Authority in Further Opposition to Defendant's Motion to Dismiss with the Clerk of Court by using the CM/ECF system which will send a Notice of Electronic Filing to all counsel of record that are registered with the Court's CM/ECF system.

Dated: June 30, 2022

/s/ Jeffrey P. Goodman

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